

1 DAVID Z. CHESNOFF, ESQ.
2 Nevada Bar No. 2292
3 RICHARD A. SCHONFELD, ESQ.
4 Nevada Bar No. 6815
5 CHESNOFF & SCHONFELD
6 520 South Fourth Street
7 Las Vegas, Nevada 89101
8 Tel.: (702) 984-5563
9 Fax: (702) 598-1425
10 dzchesnoff@cslawoffice.net
11 rschonfeld@cslawoffice.net
12 Specially Appearing Attorneys for Defendant
13 JAN ROUVEN FUECHTENER

14
15 UNITED STATES DISTRICT COURT
16 FOR THE DISTRICT OF NEVADA

17 * * *

18 UNITED STATES OF AMERICA,)
19)
20 Plaintiff,)
21 v.) CASE NO: 2:16-cr-00100-GMN-CWH
22)
23 JAN ROUVEN FUECHTENER,)
24)
25 Defendant.)
26)

17 DEFENDANT JAN ROUVEN FUECHTENER'S MOTION FOR RECONSIDERATION
18 REGARDING MINUTE ORDER (ECF 295) DENYING DEFENDANT'S MOTION FOR
19 RELEASE OF FUNDS FOR PURPOSES OF RETAINING SPECIALLY APPEARING
20 COUNSEL

21 TO: THE UNITED STATES OF AMERICA;

22 TO: ALL INTERESTED PERSONS:

23 COMES NOW, Defendant, JAN ROUVEN FUECHTENER, by and through specially
24 appearing counsel DAVID Z. CHESNOFF, ESQ., and RICHARD A. SCHONFELD, ESQ., of the law
25 firm of CHESNOFF & SCHONFELD, and hereby files his Motion for Reconsideration Regarding the
26 Minute Order (ECF 295) Denying Defendant's Motion for Release of Funds For Purposes of Retaining

1 Specially Appearing Counsel.

2 The Motion is made and based upon the papers and pleadings on file herein, the attached
3 Memorandum of Points and Authorities, and any argument or evidence that is received by the Court.
4

5 Dated this 14th day of September, 2018

6 Respectfully Submitted:

7 /s/ Richard A. Schonfeld
8 DAVID Z. CHESNOFF, ESQ.
9 Nevada Bar No. 2292
10 RICHARD A. SCHONFELD, ESQ.
11 Nevada Bar No. 6815
12 CHESNOFF & SCHONFELD
13 Specially Appearing Attorneys for Defendant
14 JAN ROUVEN FUECHTENER
15
16
17
18
19
20
21
22
23
24
25
26

MEMORANDUM OF POINTS AND AUTHORITIES

I. DEFENDANT SEEKS RECONSIDERATION OF THE MINUTE ORDER FILED ON SEPTEMBER 10, 2018 (ECF 295) DENYING HIS MOTION FOR RELEASE OF FUNDS FOR PURPOSES OF RETAINING SPECIALLY APPEARING COUNSEL, AS HE HAS A SIXTH AMENDMENT RIGHT TO COUNSEL OF CHOICE AND THE ISSUE IS NOT RENDERED MOOT BY THE APPOINTMENT OF MS. CONNOLLY AS COURT APPOINTED COUNSEL.

On August 14, 2018, specially appearing undersigned counsel filed a Motion for Release of Funds For Purposes of Retaining Specially Appearing Counsel on behalf of Defendant. *See* ECF 285. Defendant incorporates by reference as though fully set forth herein, said Motion and his Reply (ECF 291).

Pursuant to Defendant's Sixth Amendment right to counsel of choice, Defendant specifically has sought to retain undersigned counsel, utilizing a portion of the funds that are currently being restrained by the Clerk of Court, in anticipation of sentencing. Specifically, Defendant seeks to utilize the requested funds for purposes of retaining undersigned counsel for purposes of sentencing, appeal, post-conviction Section 2255 relief, and a new trial if granted.

As outlined in Defendant's Motion, Defendant requested that at most, \$580,200 should be restrained through sentencing, and \$395,100 should be returned to Defendant forthwith. This is because the amount of alleged victims seeking restitution is only fourteen. In addition, Defendant asserted that the breakdown of potential monetary impositions at sentencing are:

- \$70,000 potential restitution;
- \$10,200 potential assessments; and
- \$500,000 potential statutory fines;
- Potential total \$580,200.

1 The court is currently holding \$975,300. Accordingly, \$395,100 should be released forthwith.
2 Alternatively, Defendant requested the release of \$250,000.00 being held by the clerk to be applied
3 as fees to the law firm of Chesnoff & Schonfeld, and an additional \$50,000.00 to be applied towards
4 future costs for purposes of addressing the issues related to his request to withdraw his guilty plea, a
5 trial if granted, a sentencing if denied, an appeal, and relief pursuant to Section 2255. Upon retention,
6 undersigned counsel would substitute in as counsel for Defendant in place of Karen Connolly.
7

8 On August 15, 2018, Karen Connolly filed her Motion to Withdraw as counsel for Defendant.
9 ECF 287. Ms. Connolly, as grounds for her Motion alleged that she believed she was “constructive[ly]
10 discharged” after specially appearing counsel filed a Motion for Release of Funds For Purposes of
11 Retaining Specially Appearing Counsel. *See id.*

12 On August 31, 2018, Magistrate Judge Hoffman conducted a hearing on Karen Connolly’s
13 Motion to Withdraw as counsel for Defendant. ECF 292. At said hearing, Defendant asserted that he
14 sought to retain undersigned counsel as his counsel of choice. After conducting a portion of the
15 hearing under seal with just Defendant, Ms. Connolly, and the court present, the court indicated that
16 it was continuing the hearing on Ms. Connolly’s Motion to Withdraw. *See id.*
17

18 On September 6, 2018, the court continued the hearing on Ms. Connolly’s Motion to
19 Withdraw, and again conducted a portion of the hearing under seal with just Defendant, Ms. Connolly,
20 and the court present. ECF 293. After re-opening the proceeding to the public, the court indicated that
21 it was denying Karen Connolly’s Motion to Withdraw on the grounds that her “withdrawal cannot be
22 accomplished without material adverse effect to Mr. Fuechtener’s interests....” *See id.* The court also
23 made findings that “presently Mr. Fuechtener does not have access to funds to pay for the costs of
24 representation,” and Magistrate Judge Hoffman appointed Ms. Connolly as CJA counsel for the
25

1 Defendant. "Ms. Connolly represented that she will need additional time to prepare for sentencing and
2 will be filing a motion to continue the current sentencing date." *See id.*

3 On September 10, 2018, this Honorable Court entered a Minute Order denying Defendant's
4 Motion for Release of Funds For Purposes of Retaining Specially Appearing Counsel. Specifically,
5 the court stated in part:

6 Additionally, before the Court is Defendant's [285] Motion for Release of Funds for
7 Purposes of Retaining Specially Appearing Counsel filed by Mr. Chesnoff and Mr.
8 Schonfeld. In light of Magistrate Judge Hoffman's decision to appoint Ms. Connolly
9 as CJA counsel, Defendant's [285] Motion for Release of funds is DENIED without
prejudice as moot.

10 ECF 295.

11 Here, Defendant respectfully seeks reconsideration of the denial of his Motion for Release of
12 Funds for Purposes of Retaining Specially Appearing Counsel, as he has a constitutional right to
13 counsel of choice, and the appointment of a CJA lawyer that he is not choosing does not render the
14 Motion for Release of funds moot. A justiciable controversy regarding the restraint of Defendant's
15 funds and the retention of his counsel of choice still exists, and Defendant has not yet been sentenced.

16 It is respectfully submitted that but for the restraint of funds at issue, Defendant would not be
17 indigent, and the request to specifically apportion the restrained funds for purposes of retaining his
18 counsel of choice at sentencing and further proceedings, violates the Sixth Amendment and is in
19 contravention of *Luis v. United States*, 578 U.S. ----, 136 S. Ct. 1083, 194 L.Ed.2d 256 (2016), and
20 *U.S. v. Gonzalez-Lopez*, 548 U.S. 140, 126 S. Ct. 2557 (2006).

The Sixth Amendment of the Constitution of the United States provides that “[i]n all criminal prosecutions, the accused shall enjoy the right to ... have the Assistance of Counsel for his defence.” U.S. Const. amend. VI. The Sixth Amendment affords a defendant the right to counsel of his choosing. *United States v. Gonzalez-Lopez*, 548 U.S. 140, 147–48 (2006).

Again, it must be noted that the wrongful denial of counsel of choice can be considered structural error and warrant automatic reversal. *See U.S. v. Gonzalez-Lopez*, 548 U.S. 140, 126 S. Ct. 2557 (2006).

Accordingly, the issue relating to the release of Defendant's funds for purposes of retaining specially appearing counsel as his counsel of choice is not moot, and Defendant respectfully requests reconsideration of the September 10, 2018 Minute Order denying his Motion for Release of Funds for Purposes of Retaining Specially Appearing Counsel.

Dated this 14th day of September, 2018

Respectfully Submitted:

/s/ Richard A. Schonfeld
DAVID Z. CHESNOFF, ESQ.
Nevada Bar No. 2292
RICHARD A. SCHONFELD, ESQ.
Nevada Bar No. 6815
CHESNOFF & SCHONFELD
Specially Appearing Attorneys for Defendant
JAN ROUVEN FUECHTENER